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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,315	07/09/2001	Q. Peter Zhang	17656 USA	7760

7590

04/23/2003

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EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,315

Applicant(s)

ZHANG ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-9, 11-16, 18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-9, 11-16, 18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priorities under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the dimensions of the claimed elements including "S", "L", and "ML" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will be held in abeyance.

Claim Rejections - 35 USC § 103

2. Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerr (D277551) in view of Krishnakumar '105, and further in view of Silvers et al. Kerr teaches a container having a body, a neck portion, a closure-receiving finish portion, and pair of gripping panels. Kerr meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container with respect to S being no more than 2-1/2 in., L being at least 4 in., and ML at least 5in.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

Furthermore, Krishnakumar teaches that it is known in the art to provide a container having body portion with a lateral extent of at least 4 in. (col. 5, lines 50), and opposed gripping

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panels being no more than $2 \frac{1}{2}$ inches apart (note $d_4 = .9$ in, thus the distance between the two panels being 4 in. (diameter) - $2(.9 \text{ in.}) = 2.2$ in.

It would have been obvious to one of ordinary skill in the art to make the container of Silvers in the dimension of Krishnakuma to provide the desired dimension for holding the contained product and the desired size for gripping the container.

With respect to ML being at least 5in., it would have been obvious to one of ordinary skill in the art to provide such a dimension to provide the desired volume for the container.

Regarding claim 5, Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. (col. 3, lines 41). It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

Regarding claim 6, note the concavity of the gripping panels as shown in Fig. 2 in Kerr.

With respect to the dimensions of the container and the gripping panels as set forth in claims 7-9, it would have been obvious to one of ordinary skill in the art to provide the container in the claimed dimension to provide the desired volume and/or volume for the consumer. Such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Kerr rejection as set forth in paragraph 2 above, and further in view of Silvers et al. (D452445), and further in view of Collette et al. (4863046). Kerr meets all claimed limitations except for the projecting panels. Silvers teaches that it is known in the art to provide a plurality of inwardly projecting

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panels. It would have been obvious to one of ordinary skill in the art to provide a plurality of inwardly projecting panels in Kerr as taught by Silvers to package liquids easily.

Collette provides further evidence that it would have been obvious to one of ordinary skill in the art to provide inwardly projecting panels as shown in Fig. 10 at portions 72. It would have been obvious to one of ordinary skill in the art to provide inwardly projecting panels in Kerr as taught by Collette to package liquids easily

4. Claims 11-12, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes (D308,167) in view of Krishnakumar '105, and further in view of Slat et al. Holmes teaches a container having a body portion with a circular cross section, a neck portion, and a pair of gripping panels at the neck portion. Holmes meets all claimed limitations except for the innermost layer being PET, and the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with a diameter greater than 4 in. and S being less than 2-1/2 in. It would have been obvious to one of ordinary skill in the art to provide the container with at least 4-1/4 in. in diameter and S being at least 2-1/2 in. in Holmes as taught by Krishnakumar to provide the desired volume for the container and/or to provide the desired gripping for the container.

With respect to the innermost layer being made from PET, Slat teaches that it is known in the art to make the innermost layer 20 from PET. It would have been obvious to one of ordinary skill in the art to make the innermost layer from PET in Kerr as taught by Slat to provide the desired properties.

Regarding claim 12, Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. It would have been obvious to one of ordinary skill

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in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

Regarding claim 20, it would have been obvious to one of ordinary skill in the art to provide a neck portion with a large width end and a smaller width end in Holmes to provide the desired shape for the container. Please note that a change in shape would have been an obvious matter, since the claimed shape is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing a neck for a container. (See *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459). Furthermore, matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In *re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947)

5. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Holmes rejection as set forth in paragraph 4 above, and further in view of Leary et al. (D250392). The Holmes combination meets all claimed limitations except for the gripping panels being concaved. Leary teaches that it is known in the art to provide concaved gripping panels as shown in Fig. 7. It would have been obvious to one of ordinary skill in the art to provide concaved gripping panels in Holmes as taught by Leary to provide alternative gripping panels.

With respect to the dimensions of the container and the gripping panels as set forth in claims 14-16, it would have been obvious to one of ordinary skill in the art to provide the container in the claimed dimension to provide the desired volume and/or volume for the consumer. Such a modification would have involved a mere change in size and/or proportion. A

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change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Holmes rejection as set forth in paragraph 4 above, and further in view of Collette et al. (4863046).

Holmes meets all claimed limitations except for the projecting panels. Collette teaches that it is known in the art to provide inwardly projecting panels as shown in Fig. 10 at portions 72. It would have been obvious to one of ordinary skill in the art to provide inwardly projecting panels in Holmes as taught by Collette to package liquids easily

Election/Restrictions

7. This application contains claims directed to the following patentably distinct species of the claimed invention:

Figs. 1-8, and

Figs. 9-16.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the

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limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

To the degree applicant argues the two disclosed species differently, and that there is no generic claims, the claims have been restricted as set forth above.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai
Examiner
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April 1, 2003